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Attorney for Plaintiffs, DAVID J. LEE and
DANIEL R. LLOYD

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID J. LEE, as individuals and, on
behalf of others similarly situated,

Plaintiffs,

vs.

CAPITAL ONE BANK and CAPITAL
ONE SERVICES, INC. Virginia
corporations, and DOES 1, through 100,
inclusive,

Defendants.

Case No.: C 07-4732 MJJ

PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE

[MEMORANDUM OF POINTS &
AUTHORITIES, AND PROPOSED
ORDER, FILED CONCURRENTLY]

DATE: March 3, 2008

TIME: 2:00 p.m.

CTRM: 15

18th Floor

450 Golden Gate Ave.

San Francisco, Ca. 94102

1 Plaintiff, David J. Lee, requests that this Court, pursuant to Fed.R.Evid. 201, take
2 judicial notice of five (5) documents: (1) the Complaint filed in Lee v. American Express Travel
3 Related Services Company, Inc., docket number C-07-4765 (CRB) (N.D. Cal. Sept. 9, 2007)
4 (Exhibit "A" hereto, includes Exhibits 17, 18, 19, 28, 29, and 30 only); (2) the hearing transcript
5 relative to the Defendants' motion to dismiss in Lee v. American Express Travel Related
6 Services Company, Inc. argued before Judge Charles H. Breyer on Friday, November 30th 2007
7 (Exhibit "B" hereto); (3) Plaintiff's Notice of Appeal filed in Lee v. American Express Travel
8 Related Services Company, Inc., docket number C-07-4765 (CRB) (N.D. Cal. Sept. 9, 2007)
9 (Exhibit "C" hereto); (4) a copy of a screen from Capital One's official web site entitled
10 "Capital One ® Platinum Credit Cards 'disclosure,'" that can be found at the following URL:
11 http://www.capitalone.com/creditcards/products/10279/14/index.php?linkid=WWW_Z_Z_tg04a
12 [_CCOMP_C1_01_T_CP27914](http://www.capitalone.com/creditcards/products/10279/14/index.php?linkid=WWW_Z_Z_tg04a) (Exhibit "D" hereto); and (5) a copy of a screen from Capital
13 One's official web site entitled "Platinum MasterCard ® Cardholder Benefits," that can be
14 found at the following URL:[http://www.capitalone.com/creditcards/pdfs/MC_Platinum.pdf?](http://www.capitalone.com/creditcards/pdfs/MC_Platinum.pdf?linkid=WWW_Z_Z_v1_CP27914_C1_03_T_BGUIMC)
15 [linkid=WWW_Z_Z_v1_CP27914_C1_03_T_BGUIMC](http://www.capitalone.com/creditcards/pdfs/MC_Platinum.pdf?linkid=WWW_Z_Z_v1_CP27914_C1_03_T_BGUIMC). (Exhibit "E" hereto)

16 The grounds for this motion are that they are necessary for the Court of evaluate the the
17 reasons for the dismissal of the Plaintiffs' case in Lee v. American Express Travel Related
18 Services Company, Inc., docket number C-07-4765 (CRB) (N.D. Cal. Sept. 9, 2007), of which
19 the Defendants have asked this Court to take judicial notice. In addition, since the issue of
20 whether the Plaintiffs have appealed from the dismissal of their case in Lee v. American Express
21 Travel Related Services Company, Inc., docket number C-07-4765 (CRB) (N.D. Cal. Sept. 9,
22 2007) has direct bearing on the Defendants' collateral estoppel argument, Plaintiff believes
23 judicial notice of his appeal should be taken. Lastly, Plaintiff requests the Court take judicial

1 notice of certain admissions made by the Defendants' on their web site relative to the
2 "convenient service" aspect of their credit cards to bolster his argument vis-à-vis the holding of
3 Hitz v. First Interstate Bank, 38 Cal.App.4th 274, 286, 44 Cal.Rptr.2d 890 (1995).
4

5 The Court is advised that none of the documents in question are subject to any
6 reasonable dispute, in that they are capable of accurate and ready determination by resort to
7 sources whose accuracy cannot reasonably be questioned, this is because they are either
8 depicted on the Defendants' own official website, www.capitalone.com, or contained in files
9 held by the clerk for the U.S. District Court for the Northern District in San Francisco.
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11 Dated: January 25, 2008

Respectfully submitted,

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15 By: 

16 Matthew S. Hale, Esq.
17 Counsel for Plaintiff,
18 David J. Lee
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